

National Instant Criminal Background Check System (NICS)



2000

Operations
Report

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EXECUTIVE SUMMARY

In its 25 months of operation, the National Instant Criminal Background Check System (NICS) has proven to be successful and highly effective. The NICS has processed over 18 million transactions to date and has maintained a 71 percent immediate proceed rate. The NICS is a testimonial to the necessary and unique partnership among the various programs within the Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI). The NICS relies heavily upon the management and operation of other CJIS-held databases, including the National Crime Information Center (NCIC) and the Interstate Identification Index (III). Each background check requires automated searches of over 38 million criminal history records, over 500,000 wanted persons records, over 400,000 records of protective/restraining orders, as well as an additional one million records of other prohibited persons in the NICS Index -- all maintained within the CJIS Division. Equally vital to the program's success is the teamwork between the FBI, Department of Justice (DOJ), Bureau of Alcohol, Tobacco, and Firearms (ATF), and state and federal law enforcement agencies, including agencies that serve as state Points of Contact (POCs) for the system. These organizations work together to achieve one common goal -- enhancing public safety. Since the establishment of the NICS, millions of U.S. citizens have engaged in timely and lawful firearms transfers, while at the same time over 156,000 felons, fugitives, and other prohibited persons have been denied firearms transfers by the FBI NICS. Approximately the same number of gun transfers were denied by the POC states, so that the total number of denials since the NICS began operations exceeds 300,000.

The NICS has accomplished the following:¹

- Through a toll-free telephone number, provided over 50,000 Federal Firearms Licensees (FFLs) with information on whether prospective firearm purchasers are prohibited from possessing a firearm based on a check of three federally held and maintained databases encompassing a total of over 40 million criminal history records and other prohibiting records as defined in the Gun Control Act.
- Returned a proceed response to 71 percent of all inquiries within an average time of 30 seconds after information is entered into the NICS.
- Developed, for future implementation, 24-hour toll-free electronic access for FFLs to NICS inquiries.
- Worked to maintain the accuracy of records in the NICS Index.
- Assured system security by protecting against unauthorized access to data stored in the NICS or unauthorized use of the system.
- Purged automatically within the time allowed by regulation all records relating to a background check that resulted in an allowed transfer of a firearm.

¹ The NICS Mission Statement is attached in Appendix A.

- Provided an effective appeal process for persons who have been denied by the NICS.
- Assured system efficiency by implementing system-related hardware and software upgrades and enhancements.
- Implemented internal/external quality assurance and audit programs to ensure compliance with regulations governing the NICS and with policy and procedures as established by the NICS Program Office.
- Educated state and federal agencies regarding NICS issues and initiatives in an effort to create an environment conducive to the spirit of cooperation.
- Worked with the firearms industry to improve communications and solicit recommendations.
- Improved disposition reporting by educating clerks of courts about the NICS and the importance of having data readily available to ascertain the eligibility of prospective buyers within the three business days required by the Brady Handgun Violence Prevention Act.

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PART 1: THE NICS 2000 OPERATIONS

The NICS

The National Instant Criminal Background Check System (NICS) was implemented in November 1998 to facilitate the Brady Handgun Violence Prevention Act's (Brady Act) requirement that background inquiries be performed on prospective gun buyers before a Federal Firearm Licensee (FFL) can transfer a firearm. These inquiries are initiated by FFLs contacting one of two Federal Bureau of Investigation (FBI) call centers or a designated state Point-Of-Contact (POC) law enforcement agency. The Brady Act required that the Attorney General establish the NICS and that the system (1) assign a unique identification number (NICS transaction number or "NTN") to each transfer; (2) provide the FFL with the NTN; and (3) destroy all records in the system that resulted in a "proceed" response (other than the NTN and the date that the NTN was assigned).²

A NICS check begins when an FFL provides to the NICS information on the buyer (such as name, date of birth, sex, race, and state of residence). Using this data, the FBI call centers or the state POCs access the NICS which, in turn, searches three FBI-managed databases to determine whether the prospective buyer is precluded from purchasing the firearm. The databases are: (1) the National Crime Information Center (NCIC) 2000, which includes 548,247 records on wanted persons and information on 418,982 protection/restraining orders, (2) the Interstate Identification Index (III), which contains 38,112,850 million criminal records, (3) and the NICS Index, which contains 1,043,667 records provided by state and federal agencies about persons prohibited by federal law from receiving or possessing a firearm (such as illegal aliens, individuals dishonorably discharged from the military, and individuals adjudicated mentally defective or involuntarily committed to a mental institution).³

² A recent amendment to the NICS regulation has reduced the retention period for allowed transfers from 6 months to 90 days. The amendment is currently scheduled to be effective on May 4, 2001. *See* 66 Fed. Reg. 6470 (Jan. 22, 2001); 66 Fed. Reg. 12,854 (Mar. 1, 2001).

³ The NICS Index was built specifically for the NICS and contains records not available through III or NCIC. Records on individuals prohibited from receiving or possessing a firearm under state law, but not prohibited under federal law, are not entered into the NICS Index. Also, any record entered into the NICS Index must be removed if the record is overturned through the appeal process.

Number of NICS Transactions

In its first 25 months of operation, November 1998 through December 2000, a total of 18,574,000 background transactions have been conducted through the NICS. Of these, 9,269,156 were processed through the POC states, while 9,304,844 were processed through the NICS Operations Center. The NICS Operations Center services FFLs in 37 states and territories, while 16 states act as POC states and conduct their own background transactions.⁴

TABLE 1
The NICS 2000 Transactions

	<i>State</i>	<i>Federal</i>
January '00	340,478	299,494
February '00	358,773	348,297
March '00	393,275	343,268
April '00	326,216	291,473
May '00	295,239	243,409
June '00	298,132	252,429
July '00	293,245	249,275
August '00	346,118	336,383
September '00	354,833	427,254
October '00	386,664	459,222
November '00	410,338	488,260
December '00	479,456	521,506
2000 Totals	4,282,767	4,260,270
Project to Date	9,269,156	9,304,844

⁴ The NICS Participation Map can be found in Appendix B, and details the current status of each state's participation in the NICS. State participation has varied minimally in the NICS' first two years of operation. However, beginning December 8, 2000, the state of Oregon joined the list of full POC states.

Over 71 percent of the background inquiries conducted by the FBI result in an immediate “proceed” response. In those cases, the FFL could immediately transfer the firearm to the potential buyer. Transactions resulting in immediate proceeds are typically completed within 30 seconds after information is entered into the NICS. The remainder of the FBI background inquiries were delayed to allow FBI NICS Legal Instruments Examiners (“NICS Examiners”) research time to establish a basis for making proceed or deny determinations. Approximately 95 percent of all inquiries were issued a proceed or deny response within 2 hours. The remainder of the delayed transactions took hours or days to resolve, generally due to the need of the NICS Examiners to contact local or state sources for additional information. If the NICS is unable to complete the background check within 3 business days,⁵ the Brady Act allows the FFL to transfer the firearm to the purchaser, at the FFL’s discretion.

NICS Denials

In 25 months of operation, the FBI blocked 156,644 illegal gun sales (approximately 2 percent of the total transactions processed by the NICS). Approximately the same number of gun sales were denied by the POC states, so that the total number of denials since the NICS began operations exceeds 300,000. The top three reasons for FBI denials are records demonstrating that the potential purchaser is a felon (66 percent); has a conviction for a misdemeanor crime of domestic violence (14 percent); and has other serious prohibiting convictions such as DUIs and Non-NCIC warrants (7 percent).

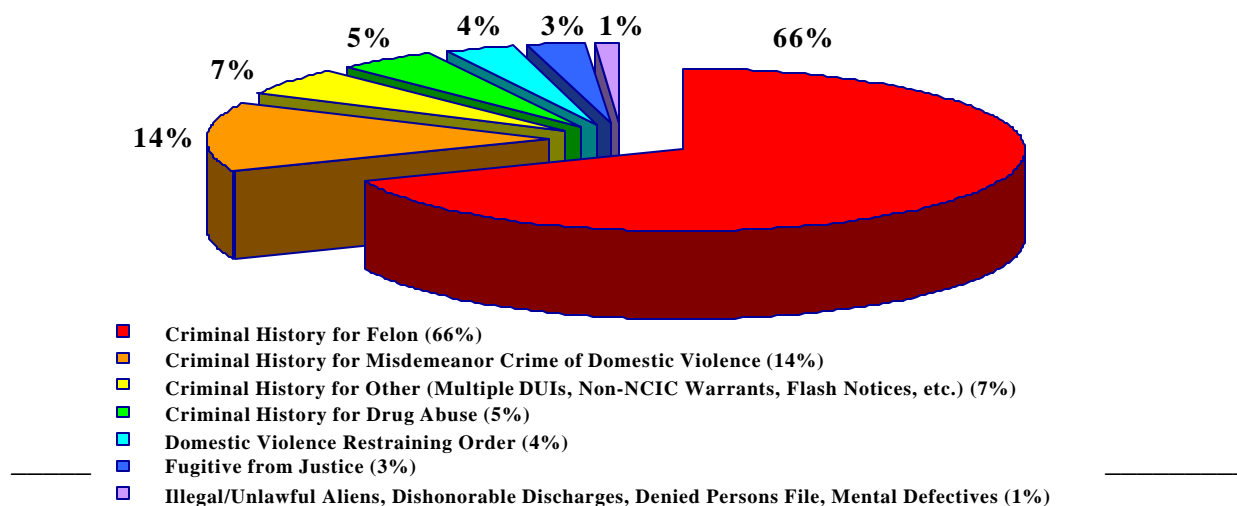


Figure 1
The NICS Denial Distribution

⁵“Business day” is defined by federal regulation as a 24-hour day (beginning at 12:01 a.m.) during which state offices are open in the state in which the proposed firearm transaction is to take place.

The NICS Demand

The demand placed upon the NICS tracks retail market trends and depends largely upon hunting and holiday seasons. By collecting use (or “demand”) information over the past 25 months of the NICS operation, the FBI has determined what times are “peak” and “non-peak” for NICS inquiries. As indicated in Table 1 (See Page 2) and illustrated in Figure 2 (below), substantial increases in the number of incoming transactions can be seen during the months of September through December. The FBI allocates resources to handle calls from the non-POC states through the NICS Call Centers and Operations Center by utilizing a refined statistical analysis originally created by the NICS development team. The workload forecast model is constantly monitored and, in anticipation of the increased demand during hunting and holiday seasons, adjustments are made in staff schedules to handle the workload appropriately. For example, in order to manage peak activity, staffing at the Call Centers is increased from an average of 192 Customer Care Providers (CCP) in summer months to an average of 280 during peak months. Experience will allow the NICS to further allocate resources as needed.

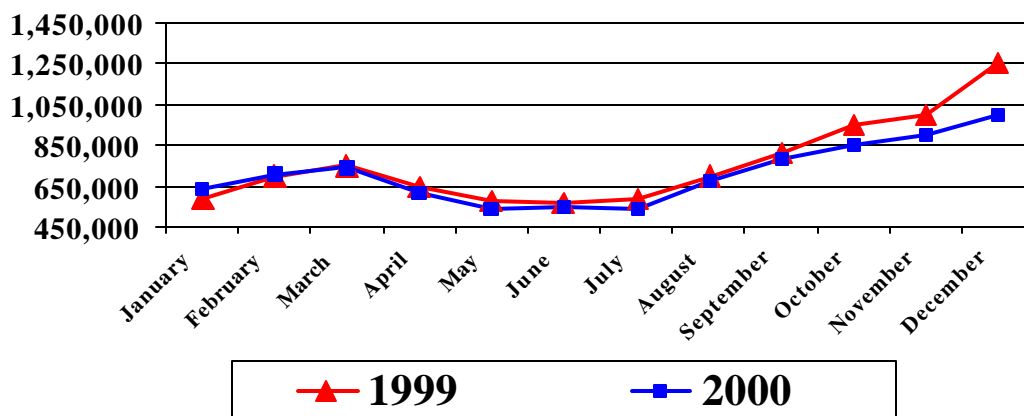


Figure 2
Monthly Comparison of the NICS Activity - 1999, 2000

PART 2: THE NICS SYSTEM AVAILABILITY

The FBI's Criminal Justice Information Services (CJIS) Division is responsible for the operation and maintenance of what is collectively referred to as the System of Systems (SoS). The SoS is comprised of NCIC, the NICS, and the Integrated Automated Fingerprint Identification System (IAFIS). IAFIS can be further broken down into three components: the Automated Fingerprint Identification System (AFIS), III and the Identification Tasking and Networking (ITN) segments. The SoS provides fingerprint identification capabilities, criminal history services, wanted persons checks, and background inquiries as required by the Brady Act. The information available through the SoS facilitates police work and fosters police officer safety. It also helps prevent the sale of guns to prohibited persons. All of the SoS segments function with a high degree of interdependence, relying upon complex interconnected indices and tables to operate properly and to ensure high confidence in information furnished to users. Accordingly, the loss of one database may impact the delivery of information in other parts of the System. For the NICS to operate properly, both the NCIC and III databases must be fully operational. To ensure accuracy, whenever any of the systems with which the NICS interfaces is unable to support a complete background check, the FBI places the NICS in an "out of service" mode. The NICS procedure dictates that if one of the databases is off-line, the NICS searches the remaining active databases. Once the previously down database becomes available, the search is completed and the response provided. This policy helps to reduce the number of delayed responses returned to gun dealers.

The NICS is a unique system and accordingly its success rate cannot be compared to those of other systems. Time and experience provide opportunities for refinement, and each adjustment moves the NICS one step closer to its goal of 100 percent availability. However, any complex system will encounter hardware and software problems. Per original requirements, the NICS was designed to support 15 FBI users and a maximum of 40,000 transactions per day. Today, the NICS employs over 400 FBI personnel and has a recorded daily high of 74,891 transactions, processed on December 23, 2000.

With changes in legislation, the forecast for future maximum capacity was modified substantially. Architectural alterations were made to handle the changing forecasts as state POC participation levels and other open questions became settled. Increases in the number of processors and the amount of memory allowed for the manageability of existing transaction activity, but left no room for future expansion. With operational experience and research, recommendations were made on how to improve the system's robustness and capacity to expand. The NICS Program Office decided to phase in system enhancements and upgrades incrementally utilizing existing equipment, rather than completely replace hardware and software all at once.

After the NICS first began operations on November 30, 1998, system availability showed steady improvement. However, beginning July 11, 1999, the FBI replaced two major computer systems, both of which interface with the NICS. One of the new systems, NCIC, was implemented on July 11, 1999. The IAFIS, the second new system, was interfaced with NCIC and the NICS on July 28, 1999. Significant outages occurred during July and August due to the implementation of these two systems. Since then, the FBI has made tremendous progress in stabilizing both NCIC and IAFIS. To increase system availability in the future, these systems

periodically need to be taken offline to install software patches. This system maintenance is always planned during the NICS downtime.

These efforts resulted in the reduction of unscheduled downtime and from September 1999 to April 2000, all segments had an average service availability of approximately 96 percent. However, in May 2000, the NICS suffered the longest outage to date, lasting over 60 hours during May 11-14, 17, and 22, 2000, due to problems encountered within III.⁶ The III outage resulted in the loss of service to not only the NICS, but to IAFIS and federal, state, and local law enforcement agencies as well.

The FBI recognizes the disruptive effect downtime can have on business operations of gun dealers and the resulting inconvenience to prospective gun buyers. Whenever an unscheduled outage occurs, the NICS Program Office works diligently to provide notification to POCs and licensed gun dealers. Per the current NICS policy, gun dealers are notified of an unscheduled outage by a message placed on the call centers' phone system, informing gun dealers that the system is temporarily out of service. POC states are notified of an unscheduled outage by a message sent via NCIC 2000. However, in instances of unusual circumstances like the May 2000 outage, additional pro-active measures are taken to help alleviate any adverse effects. Some of these steps include faxed notices to various state NICS contacts, personal phone calls to POCs, partial-POCs, and larger volume gun dealers, and the scheduling of additional staff to handle the anticipated increases in the number of calls and backlogged transactions.

Since the May 2000 outage, the SoS record of availability has remained at approximately 95 percent, while more specifically, the NICS has averaged 98 percent availability as illustrated below in Figure 3. The FBI is diligently working to ensure maximum system availability. Part of this assurance comes with the installation of some much needed and anticipated system enhancements, discussed in Part 3.

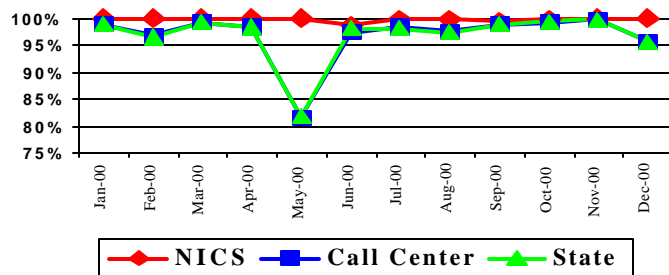


Figure 3
The NICS 2000 System Availability

⁶ The III database contains 94 percent of the records checked by the NICS.

PART 3: THE NICS SYSTEM ENHANCEMENTS

System enhancements are vital to the continued success of the NICS. Some of the rationale for upgrading the architecture of the NICS are:

- To overcome end-of-life impacts/limitations of current Commercial-Off-The-Shelf (COTS) hardware and software.
- To increase system robustness.
- To reduce system resource conflicts and prevent processing bottlenecks that interfere with system performance.
- To increase the system's ability to expand for increased NTN load, new interfaces, etc.
- To support greater number of local users.
- To place the NICS in a position to support alternate hardware options (as needed).

With these objectives in mind, many successful enhancements have been implemented during 2000. The benefits of these enhancements were evident in the program's operational efficiency measures, especially during the 2000 peak season.

The NICS Upgrade

The first system enhancement priority was a system upgrade. The upgrade was necessary due to the increased transaction loads placed on the system. Prior to implementation of the upgrade, statistical forecasts showed that the expected workload associated with the upcoming peak season could be in excess of 125 percent of the NICS current system capacity. Peak season 1999 showed the NICS servers running between 92 percent and 96 percent capacity at peak usage. Industry standards state that any system should have 40 to 50 percent of system resources available at any give time in case of unexpected spikes in need for those resources as well as sudden needs for long term increases.

The successful installation and implementation of hardware and software for the NICS upgrade took place in September 2000. The upgrade quadrupled the NICS processing capacity making the system more efficient and allowing for its future growth.

ITN Bypass

The original system design required all the NICS traffic to pass through an ITN segment of IAFIS in order to reach criminal history data stored in III. Problems within this segment accounted for 70 percent of the NICS downtime. The bypass, completed on September 3, 2000, provides the NICS traffic with an alternative route to access the III database, thereby avoiding a substantial cause of system downtime.

NCIC Filtering

Since the implementation of the new NCIC system in July 1999, the rate of false positives⁷ received by the NICS increased by 2 percent. NCIC filtering, a system of additional rules relating to the NICS scoring algorithm used for NCIC responses, should eliminate the 2 percent increase. Phase 1, implemented in the fall of 2000, is a transparent filter not intended to change the results of matches returned by the NICS. Rather, Phase 1 assigns a score to each NCIC hit for subsequent comparison by NICS personnel. If the NICS new NCIC filtering rules would have eliminated any of the hits returned by NCIC 2000, it is assigned a value of 0. This scoring system will allow NICS personnel to evaluate the accuracy and effectiveness of the new filtering rules. Once the evaluation is complete, the system will be modified as necessary. The full implementation of this enhancement, Phase 2, will reduce the overall number of false positive hits. It is anticipated that Phase 2 will be put into effect in September 2001. POC states desiring to take advantage of Phase 2 may request that the filtering apply to their state's responses from the FBI. The FBI does not filter responses to the POC states unless requested.

Electronic Transmission of Denials to ATF

Prior to this enhancement, the NICS would send ATF denial information via magnetic tape on a weekly basis. Automating this process will ensure the timely transmission of denial information to the appropriate authorities. To accomplish the automation, two stand-alone computer systems were linked with one another and placed at ATF headquarters and at the FBI CJIS Division complex. Both systems have their own encryption software to ensure security. The NICS denial information is now transmitted to ATF on a daily basis.

NICS E-Check

One of the most exciting system enhancements is the implementation of the highly anticipated NICS E-Check system. The Brady Act required the Attorney General to establish a NICS that any FFL may contact, "by telephone or by other electronic means in addition to the telephone" for immediate information on whether the transfer of a firearm would violate state or federal law. Since 1998, FFLs have contacted the NICS by telephone. The permanent provisions of the Brady Act permit the development of alternative electronic means to allow FFLs to conduct background inquiries through the NICS.

On May 7, 1999, the FBI conducted a survey to identify what form of electronic access was preferred by the dealers for whom the FBI conducts background inquiries. The survey was distributed to the 6,600 dealers who account for approximately 80 percent of the FBI's NICS transactions. In addition, the survey was distributed to a random sampling (approximately 1,035)

⁷ A false positive is referred to as any "hit" the NICS returns during the search of criminal history records that does not match the identifying data of the potential gun purchaser.

of the lower volume dealers serviced by the FBI. Survey participants were told that their responses would be used to determine which method(s) of electronic access would accommodate the highest volume of transactions in the most cost-effective manner. Cost comparisons were also prepared on the development and logistics to operate and maintain a PC-based software solution using secure dedicated communications versus a secure Internet option with COTS software.

The survey results indicated that the secure Internet solution was the most technically feasible and cost-effective when considering developmental costs, recurring operation and maintenance costs, and ease of use for the FFLs. Seventy-one percent of the FFLs that responded to the survey indicated that they currently have Internet access and are interested in utilizing the NICS E-Check option.

When the NICS E-Check system is implemented, FFLs will initiate a NICS background check through an Internet Service Provider. While the NICS web-site is open to the general public, the NICS E-Check will be accessible only through a secure registration process. The required identifying information about the applying purchaser will be transmitted to the NICS through the NICS E-Check system. Likewise, the NICS will respond to the request via the Internet. An FFL may initiate a background check via NICS E-Check anytime during the NICS normal operating hours (8 am-1 am Eastern Standard Time). However, information on completed background transactions can be retrieved seven days a week, 24 hours a day. Due to the connectivity of the Internet, security has been the foremost priority throughout the development of the NICS E-Check, and the FBI will take extensive measures to ensure the appropriate security requirements are met.

The FBI coordinated with contractors Lockheed Martin Energy Systems and Science Applications International Corporation (SAIC), as well as NICS users, to develop the design of the NICS E-Check system. A focus group study was conducted on October 3 and 4, 2000, with 12 different FFLs. The proposed design was presented and discussed, and the FFLs had an opportunity to provide comments and feedback.

Representatives from Lockheed Martin and SAIC then held a two-day critical design review meeting with NICS personnel on December 6 and 7, 2000. The meeting was successful and resulted in minimal changes to the proposed design. Implementation of the NICS E-Check system is set for late 2001. The first phase of implementation will involve limited access and usage of the system by FFLs in states of close proximity to the NICS Operations Center to better facilitate on-site consultations and trouble-shooting. The NICS E-Check will become available to the remaining FFLs in stages, thereby allowing the NICS to better manage the system's initial performance.

PART 4: THE CALL CENTER PILOT PROJECT

The NICS Program Office is responsible for the management and operation of the NICS as required under the Brady Act. The FBI hired an independent contractor for a national call center to perform the NICS background inquiries for gun dealers in the states that decline to serve as POCs for the system. There are two call centers, one located in Uniontown, Pennsylvania, and the other in Moundsville, West Virginia. In early 2000, the NICS Program Office began developing the capability for an in-house call center to be operated by a pilot unit. The goal of the NICS in-house call center was to determine if an in-house call center would significantly improve the NICS services and reduce overall contracted call center costs. The FBI employees in the NICS Program Office have the resources and authority to enable them to make immediate decisions while the FFL is on the phone, thereby increasing the number of immediate proceed responses and eliminating transactions that would normally enter the NICS delay queue.

In February 2000, the NICS Program Office held a meeting with contractors requesting their participation in the implementation of an in-house Pilot Call Center Project. It was decided that incoming calls from FFLs should be geographically routed. Geographic routing is accomplished by designating area codes recognizable by the system. The FFL would call the same toll-free number as in current operations, but if calling from one of the specified area codes, would be directed to the in-house pilot call center for initiation of the background check.⁸ In allocating the calls, a relatively new concept in the telecommunications service industry was implemented -- Re'sume' Routing. Under the Re'sume' Routing, as applied in the in-house project, calls are routed to the best available examiner with the skills needed to handle the nature and function of the call.

The FBI identified possible states for participation in the in-house project by researching the volume of calls received by each state that possessed a single area code. The states deemed appropriate for the pilot project were Rhode Island, Delaware, North Dakota, South Dakota, Wyoming, Maine, and Idaho. Actual implementation of the in-house call center began on May 1, 2000. The implementation date for each participating state was as follows:

⁸ Geographic Routing is known in the telecommunications industry as being more customer friendly because the caller is not inconvenienced in any way by having to initiate a procedure for service other than that which is already established.

- Rhode Island - May 1, 2000
- Delaware - May 10, 2000
- North Dakota - May 23, 2000
- South Dakota - May 23, 2000
- Wyoming - June 2, 2000
- Maine - June 14, 2000
- Idaho - June 26, 2000

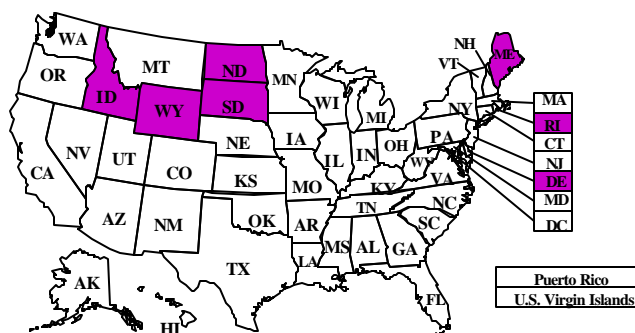


Figure 4
Call Center Pilot Project Participating
es

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As with all aspects of the NICS, quality assurance was a top priority for the in-house pilot call center project. The NICS staff participating in the pilot underwent training regarding customer service and call center operations. In order to uphold the FBI/NICS Mission Statement, a rigorous schedule was implemented for quality assurance monitoring. This schedule involved quality call sampling by supervisors to ensure the highest quality of service to the NICS customers. Call sampling also allowed for the assurance of compliance with established NICS procedures and provided a means for the identification of strengths and areas of improvement. Also part of the quality assurance initiative was the implementation of a response assessment plan. The Internal Assessment (IA) team regularly assessed a sampling of transactions processed through the in-house project.

From May 1, 2000, through December 31, 2000, the NICS in-house project exceeded forecasted operational statistics. The in-house project has fielded 139,682 calls and processed a total of 147,774 transactions.⁹ The in-house immediate proceed rate is 89 percent, while the call center rate remains steady at 71 percent. The call center Customer Care Provider (CCP) does not have access to and cannot receive any data relative to criminal history records, wanted persons, or any other protected information. Rather, the CCP receives only a proceed or a delay response from the NICS. The NICS Examiner, in contrast, can immediately determine the validity of the match the NICS system makes between the applicant and the criminal history record in question. This increase of 18 percent in the immediate proceed rate enhances the efficiency of the NICS and significantly reduces regular delay queue work. The average talk time¹⁰ for the pilot is three minutes and nine seconds. The service level (percent of incoming calls answered within 20 seconds) is 93 percent. In 2000, a total of 431 potential gun purchasers (approximately 3 percent

⁹ The number of transactions does not necessarily equal the number of calls. On one single call, an FFL may initiate multiple background inquiries.

¹⁰ The average talk time is defined as the total time on the telephone with the customer in order to provide him/her with the anticipated service.

of total transactions) were denied their purchase of a firearm through the in-house pilot call center project.

As stated previously, the in-house pilot call center project was able to respond to FFLs in a matter of seconds in cases of immediate proceeds. Additionally, the pilot project enabled the FFL to receive a denial response while still on the telephone with the NICS Examiner. This meant that the potential gun purchaser was more than likely still in the FFL's business establishment while the background check was being initiated, potentially placing the FFL in a volatile situation. The FBI surveyed FFLs to measure the effect of these types of situations. At the time of the survey, 15 instances were identified as a "quick denial." Each FFL associated with these transactions was contacted and asked if they had encountered any adverse effects from a "quick denial." Each FFL stated some general awkwardness receiving the denial response so quickly and then having to tell the applicant. However, the survey respondents indicated that it was a situation that they could handle tactfully. Most did not view the situation as affecting their safety any more than the normal course of business. All FFLs surveyed reported satisfaction with the service being provided through the in-house pilot call center.

The in-house pilot call center successfully accomplished the goals set forth during the developmental phases. The benefits derived from implementing the in-house pilot call center project are numerous for all parties involved -- the gun purchaser, the FFL, and the government. The benefits to a potential gun purchaser include more efficient level of service, increased chance of approval without a wait, reducing visits to the FFL's place of business during the purchasing process and improved overall public opinion of the program. An FFL realizes benefits through a higher and more efficient level of service facilitating successful transactions, decrease in disruptions caused by multiple contacts with the NICS regarding transactions, and increased confidence that the gun is being transferred to an authorized individual. The government benefits because a higher level of efficiency can be achieved in daily operations, the Brady Act requirement of supplying information to dealers "immediately" will be better met, and improved customer service can be provided because the same store personnel and NICS staff member can complete the transaction process together.

PART 5: CRIMINAL HISTORY DISPOSITIONS

Final disposition information is vital to the success of the NICS Program. The FBI is prohibited from denying a NICS transaction based solely upon arrest information. The final judicial action taken in regard to any charge is required to determine the eligibility of a potential firearm purchaser. Therefore, the NICS Program is constantly looking for new ways to improve disposition submissions. For more than 45 years, an ongoing concern of the FBI has been obtaining final disposition information on criminal arrest fingerprint cards maintained as part of the FBI identification records. The FBI has continuously stressed that the submission of information on dispositions is critical to the completion of the FBI identification record. However, the volume of transactions and prompt response requirements of the NICS have exposed, for the first time, the extent of the missing disposition problem.

Up-to-date criminal histories serve both law enforcement and the public. They provide comprehensive information in making law enforcement decisions, alert police officers to prior histories of violence, provide investigators with leads, assist courts in making sentencing decisions, and prevent persons from being placed in employment positions for which they are unfit. In most cases, it is the disposition of an arrest that is missing. The NICS Program Office maintains a tracking system of all requested dispositions. When the information available to the NICS reflects only an arrest, the NICS Examiner will request disposition information from the appropriate authorities. In 50 percent of the cases, no disposition information is available. Without such information, the NICS cannot complete a background check.

It is in the best interest of not only the NICS, but law enforcement and public safety, that states make it a priority to have authorized agencies expeditiously submit complete records to the FBI according to established policy. For example, indicating whether an arrest is for a felony, misdemeanor, or domestic violence offense is of enormous help to the NICS staff in determining whether, if the potential purchaser was convicted of the offense, the conviction would act as a disqualifier.

Historically, state law enforcement, usually the state police, developed a state identification bureau that collected arrest information and identification (fingerprint) information. Dispositions were not needed for everyday police work. Over time, other state criminal justice components developed a need for disposition information. However, updating arrest information proceeded slowly. The incremental improvement in criminal history record keeping can also be attributed to the voluntary nature of the entire system. The FBI has no legal authority to make states share their criminal history information, and most state repositories do not have control over state court clerks (often elected county officials). System improvement depends on cooperation and goodwill at many levels.

Preemptive Steps Taken During Development of the NICS

Prior to implementation of the NICS on November 30, 1998, the Brady Act Task Group¹¹ anticipated the potential difficulty of retrieving missing dispositions in a timely fashion for the NICS transactions. In response, the FBI took a number of pre-emptive steps. First, the NICS personnel were made responsible for particular regions in order to facilitate the development of state-specific expertise. In addition to becoming expert on the records from their assigned states, input from states has allowed the FBI to better conform their methods for requesting disposition information to the relevant state organization's requirements. For example, some states prefer faxes or National Law Enforcement Telecommunications System (NLETS) messages to phone calls. Second, the NICS Program Office developed protocols to exhaust all resource materials in disposition searches before making direct personal contact with the states. For situations in which personal contact is necessary, the NICS personnel developed a network of designated state contacts to provide assistance in researching missing dispositions. These contacts provide valuable information about state personnel with access to a requested record.

Variance Between State and Federal Records

Research reveals that criminal history information maintained at the state level is not always reflected on the FBI identification record and vice versa. In May 1997, the Bureau of Justice Assistance (BJA) conducted a study comparing state held criminal history records to those contained within the federal database. Their report indicated that only 1/3 of offenders listed in state criminal history repositories were also listed in III.

Recently, the NICS Program conducted a similar study to ascertain updated information on the degree of variance existing between state and federal criminal history records. A sampling of NICS Examiners participated in the study for a period of one week. For every transaction assigned to them, the FBI record was compared to the state-held record. The NICS Examiners do not always request a state record with every NICS transaction. In cases where the FBI record did not contain any possible prohibitors, the NICS Examiner would have no reason to further question the person's eligibility and additionally run a query of the state's records.

The following examples are a few of the results obtained from this study. But for the study's focus, in these particular cases, the NICS may have issued a "proceed" response because the federal record may not have contained charges that are considered disqualifying under the provisions of the Brady Act. The NICS study demonstrated that the problem is not restricted to a small number of states, but rather is a nation-wide issue.

¹¹ The Brady Act Task Group was composed of representatives from the FBI, DOJ, ATF, and state and local officials. See Appendix D.

Table 2
Record Comparison of Criminal History Information

	FBI	State
Example 1	No Record	4 Arrests (2 of which were Assault & Battery)
Example 2	11 Arrests	26 Arrests (Including Burglary, Battery, Theft, Drug, and Illegal Firearm possession charges)
Example 3	No Record	1 Felony Child Abduction Arrest
Example 4	1 Arrest	11 Arrests (Including Attempted Murder, Grand Larceny, and Battery Charges)
Example 5	10 Arrests	98 Arrests (Including Grand Larceny, Kidnaping, Robbery, Domestic Battery, and Illegal Firearm Possession charges)

Whenever these types of discrepancies are detected, the FBI record is modified to reflect this information, as was the case some 142,168 times. Disposition information received at the FBI that is not reflected on the state level is likewise returned to the state for processing when applicable. In addition, the NICS Program Office has established the Disposition Document File (DDF) database that includes disposition information obtained but otherwise ineligible for posting to the national databases, usually due to missing information in required data fields. The documentation is scanned and saved for future referencing, again helping to alleviate the need for the NICS personnel to initiate direct contact with local and/or state agencies for information.

Missing Dispositions Reduce the Effectiveness of the NICS and Lead to Default Proceeds

Since the implementation of the NICS on November 30, 1998, records indicate that over 8,900¹² guns were sold to disqualified individuals because disposition information about the purchaser was unavailable to the NICS staff. Too often the NICS personnel are unable to obtain the missing data within the three business day limit imposed under the Brady Act. Missing information in the nation's criminal and noncriminal justice records undermines the intent of the Brady Act, which is to prevent disqualified persons from purchasing firearms from FFLs.

Under the Brady Act, firearms are not to be transferred from an FFL to a purchaser until a NICS background check is initiated for the purpose of determining whether the transfer would violate applicable federal and state law. However, if the NICS transaction is not completed

¹² See Table 3 regarding firearm retrieval requests forwarded to ATF.

within three business days (excluding the day on which the query was made), the sale of the firearm is allowed to proceed by default (a "default proceed"). Excluding NICS transactions initiated by POC states, the NICS performed 4,260,270 firearm transactions in 2000. Statistics gathered between April and December 2000 report that 45,785 transactions resulted in default proceeds. A default proceed is a NICS transaction in which the disposition information or clarification of an arrest could not be obtained; therefore, a determination whether to proceed or deny could not be made. The inability to make that determination could lead to the transfer of a firearm to a person who is prohibited, or depending on the FFL's exercise of his or her discretion, the denial of a firearm to a person who is not prohibited.¹³

Default proceed transactions are a very small percentage of the NICS total transactions. Nevertheless, they are a cause for concern given the fact that their absolute number is large and they present risks to public safety. The following example illustrates the public safety risk involved:

In a suburb of Cleveland, Ohio, a 23-year-old man tried to purchase a 9 mm semiautomatic pistol from a gun store. The gun store personnel processed the application through the NICS, and the transaction was delayed. The NICS staff were unable to determine his complete criminal history record within three business days, and the FFL transferred the firearm. The day after receiving the firearm, a friend of the gun buyer used the firearm to rob an East Cleveland restaurant. The applicant had been previously convicted of assault and purchased the firearm for his friend; the friend used the firearm in a robbery. Both were convicted felons, and both were members of the East Cleveland Crips Gang.

Default proceeds also place resource demands on law enforcement agencies, particularly the ATF which has jurisdiction to retrieve the firearms. Retrievals expose law enforcement agents to potential risks and divert ATF's already limited special agent resources from other investigations. The law enforcement procedures for dealing with default proceeds are described in the following paragraphs.

¹³ Firearms are not transferred for all default proceed transactions. The FFL has the discretion to decide whether he or she will proceed with the transaction without a definitive response from the NICS. Many national retailers have an organizational policy to not transfer a firearm without a definitive proceed response from the NICS.

The NICS Default Proceed Procedures

Although the FFL, under federal law, has the right to proceed or deny a firearm transfer at his or her discretion, the NICS Examiners will continue to research for resolution on these cases for an extended period. If the final status can be determined at a later date, the FFL is advised of the finding to proceed or deny. On cases where the transaction should have been denied and the NICS Examiner learned that the FFL had legally proceeded with the sale, a firearm retrieval is initiated.

FBI procedure provides that when a NICS Examiner discovers a firearm has been transferred to a prohibited individual, the FBI first immediately notifies ATF Headquarters that a prohibited person is illegally in possession of a firearm. Second, the NICS contacts local, state, and/or federal law enforcement agencies, as determined by the purchaser's address obtained from the ATF Form 4473. Upon receipt of notification, ATF procedure requires that an ATF investigation be initiated and, in a coordinated effort with local, state and/or federal law enforcement, an attempted retrieval of the firearm be conducted to ensure public safety. All firearm retrieval transactions are given priority handling.

Of the 45,785 default proceeds transactions between April and December 2000, the NICS eventually received disqualifying disposition information in 5,056 cases, resulting in referrals for firearm retrievals.

The following table presents monthly statistics of requested firearm retrievals since the inception of the NICS.

Table 3
Annual Number of Requested Firearm Retrievals

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1998												133	133
1999	412	116	228	390	291	221	196	358	266	423	221	597	3719
2000	459	492	495	434	365	322	306	386	394	500	483	420	5056
Total	871	608	723	824	656	543	502	744	660	923	704	1150	8908

Improving Disposition Submissions

The solution for obtaining final disposition information lies outside the control of the FBI. The sources of disposition information are local, state, and federal law enforcement agencies. In the NICS Program, over 400 employees working shifts covering 17 hours a day and 7 days a week request missing information from the courts. Updating criminal history records requires resolve and commitment at the state and local level. Through the cooperative efforts of agencies at each level, over 142,168 dispositions have been posted to the FBI's database since the inception of the NICS. The FBI strives to make it as easy as possible for courts to submit disposition information. They can be sent in paper or electronic form. The NICS staff members also accept disposition information toll free by fax at 1-888-550-NICS.

As noted above, final disposition information is vital to the success of the NICS Program. Therefore, the NICS is constantly looking for new ways to improve submissions. Some of the options and assistance available to states in submitting the needed information to the FBI are discussed below.

Machine Readable Data (MRD): The majority of disposition information is received via mail where a Final Disposition Report Form, commonly referred to as an R84 Form, is submitted. However, in 1990, disposition submission via Machine Readable Data (MRD) was implemented. This method was developed to allow authorized states to submit dispositional data on a tape to the FBI for the automatic update of up to 50,000 arrest entries per tape by interfacing with the IAFIS. Currently, 18 states have chosen to submit data via the MRD electronic format.

Internet: Because the Brady Act has a mandatory three business day time frame to complete a transaction, the NICS Program is authorized to obtain disposition data by means other than those established by CJIS Divisional guidelines. The NICS learned that they could access some state disposition information either through the Internet or through dial-up access. The FBI currently has permission to obtain information via these means from four states (Alabama, Colorado, Kansas, Wisconsin). This resource is contacted prior to initiating personal contact with the state and/or agency for information.

National Criminal History Improvement Program (NCHIP): Lack of funding is a major obstacle to timely reporting. Recognizing the need to strengthen the criminal history record system, Congress authorized the National Criminal History Improvement Program (NCHIP). The NCHIP, established in 1995, is an umbrella program focusing on assisting states in areas relating to criminal records (including protection orders and sex offender records), identification and communications systems, and the development of interfaces to support national record systems administered by the FBI. The program, administered by the Bureau of Justice Statistics (BJS), was initially established to implement the grant provision of the Brady Act and the National Child Protection Act of 1993 (NCPA). The goal of the NCHIP program is to ensure that accurate records are available for use in law enforcement, including sex offender registry requirements, and to permit states to identify ineligible firearm purchasers.

All states have received funds under NCHIP to upgrade the quality of criminal history record systems. When making its grant awards, BJS has consistently emphasized the importance of reporting disposition information. Funds have been awarded for acquisition of advanced equipment, development of software, and conversion of manual records to an automated format which permits instant access and linkage. Automated criminal records permit immediate access for law enforcement and other purposes such as background checks. To ensure compatibility, all record enhancements funded through NCHIP are required to conform to FBI standards for III participation. III participation has increased substantially since the enactment of the Brady Act, from 26 states at the end of 1993 to 41 states as of April 2001. One additional state is scheduled to enter the III on May 16, 2001, and another is likely to be participating by July 2001.

Trend data from prior surveys show that record quality and access to records has substantially increased as a consequence of the NCHIP and increased III participation. A BJS survey conducted in 1999 indicated that states held more than 60 million records, a 23 percent increase from the 50.6 million records in held in 1993. The number of records accessible to states through the III increased by 45 percent from 25.5 million in 1993 to 37.1 million records in 1999. The number of III records with dispositions linked to arrest cycles climbed nearly 80 percent, from 13 million records in 1993 to 23.2 million records in 1999.

The NCHIP program has also put special emphasis on ensuring that domestic violence-related offenses are included in criminal records. Funds have been awarded specifically for development of state protection order files that are compatible with the FBI's national file so as to permit interstate enforcement of protection orders. To date, NCHIP funds have assisted 30 states to begin submitting data to the FBI's National Protection Order File, which became operational in July 1999. As of February 28, 2001, 31 states were contributing records to the NCIC Protection Order File, and the states have provided a total of 418,982 records to the FBI.

Since the inception of the NCHIP program in 1995, all 50 states and four U.S. territories applied for and received NCHIP grants, totaling over \$314 million. In FY 2001, BJS expects to award nearly \$44 million to the states, the District of Columbia, and to U.S. territories to continue the improvements to the criminal records infrastructure in support of the FBI's efforts to promote more thorough and accurate background checks.¹⁴

¹⁴ Information regarding NCHIP can be obtained by visiting the NCHIP web site at <http://www.ojp.usdoj.gov/bjs/crs.htm> or the Bureau of Justice Statistics web site at www.ojp.usdoj.gov/bjs.

PART 6: THE NICS QUALITY ASSURANCE PROGRAM

Internal Quality Assurance Measures

The NICS Quality Assurance Program relies upon every employee taking an active role to maintain and continuously improve the quality, efficiency, and accuracy of the NICS Program. The NICS Operations Manager ensures that the NICS Quality Assurance Program is understood, implemented and maintained at all levels of the NICS. Quality standards are established, audited, and continually measured and reviewed for improvement. Each NICS employee has a personal responsibility to ensure continuous improvement of the quality of their work. The NICS is highly confident regarding the quality measures in place.

Internally, the NICS Program Office has established an Internal Assessment (IA) team and Process Control (PC) team. The IA team assesses all functions and components of the NICS Program to ensure adherence to and evaluate the effectiveness of approved policies and procedures. During calendar year 2000, the IA team performed 327 assessments analyzing over 42,000 different transactions. The PC team monitors quality performance statistics, performs daily statistical functions, and ensures the NICS is operating properly. Through August 31, 2000, the PC team reviewed 100 percent of all denials. The PC team helps to ensure the accuracy of the denial decisions by examining the justifications for those decisions. With a recent policy change, the NICS management requested that the PC team evaluate a percentage of both deny and proceed responses to better ensure the overall quality of services provided. In addition, the PC team was instrumental in the research, solicitation, and addition of over 265 records to the Denied Persons and Mental Defectives files of the NICS Index. Both teams report results of their assessments and monitoring to the NICS management on a regular basis. This continuous feedback policy allows management to consistently improve the NICS operations.

The NICS Program Office solicits the assistance of a CJIS counterpart -- the Quality Assurance (QA) Group -- located within the Contracts Administration Office. As explained earlier, the NICS operates in partnership with the various programs and entities within the CJIS Division. The NICS relies heavily upon the management and operation of other CJIS-held databases such as NCIC and III. This inherent working relationship requires that work procedures often overlap between programs. To assess the efficiency and effectiveness of procedures and policies in this category, the NICS and CJIS employ the QA Group unrelated to either of the affected programs. The utilization of the QA Group has proven most beneficial in identifying procedural and technical areas of improvement, which ultimately improves operational efficiency.

External Quality Assurance Measures

The NICS Program Office solicits the assistance of the CJIS Audit Unit to audit POC states and federal agencies contributing to the NICS Index. The NICS POC audits are handled as an adjunct to the already established regimen of NCIC audits of state and local law enforcement users. During 2000, the CJIS Audit Unit, in conjunction with personnel from the NICS IA team, performed audits on a total of seven POC states and one federal agency. Through the use of interview and on-site inspection, the auditors ascertain the level of compliance with federal rules and regulations relating to the NICS and determine the state's adherence to federal POC guidelines. For the state POCs, these audits encompass all areas of a state-held program including the state program structure, employee hiring and training, system security and monitoring capabilities, transaction retention, the existence of state laws allowing variance from federal guidelines, ability to correlate with the national system, appeal process, state-held databases, and a wide array of procedural-related categories.

POC Audits: The results of the POC audits have been overwhelmingly positive. For the most part, those audited were in compliance with federally established guidelines. Some of the most common discrepancies have been:

- Varying state interpretations of federal statutes.
- Brady indicators recorded incorrectly in the NCIC Protection Order file.
- Inaccuracies regarding the date of protection order expiration.
- Purge/retention issues.
- Correlation of state transactions to the national database - ensuring the traceability of the NTN provided by the NICS.
- Assurance that applying individuals are aware of the existence of an appeal process.

Federal Audits: The intent of audits for federal agencies is to ensure the quality and validity of the records contributed by the agency to the NICS Index. The NICS Index was created solely for the purpose of NICS background inquiries and is maintained and managed by the NICS Program Office. The NICS Index captures records with federally disqualifying data but which are unqualified for entry into any of the existing databases already being referenced by the NICS (III, NCIC). The six categories of records contained within the NICS Index are Controlled Substance Abuse records, Mental Defective records, Illegal/Unlawful Alien records, Dishonorable Discharge records, Citizenship Renounced records, and Denied Persons records. As of December 31, 2000, there were a total of 1,043,667 records contained within the NICS Index. The audit performed this year reported that the assessed federal agency was in full compliance with federally established guidelines for submitting records into the NICS Index. A random sampling of 207 records were assessed and revealed a 16 percent error rate. Corrective action was immediately taken and awareness was heightened regarding the submission and maintenance of records supplied to the Index. Table 4 represents the distribution of records contained within the NICS Index at the close of 2000.

Table 4
Active Records Contained Within the NICS Index

Title	Total Active Records	Federal Records	State Records	Other Records
Controlled Substance Abuse	101	0	100	1
Mental Defective	89,591	89,492	99	0
Illegal/Unlawful Alien	927,875	927,871	4	0
Dishonorable Discharge	6,819	6,818	1	0
Citizenship Renounced	12,603	12,603	0	0
Denied Persons	6,678	0	6,678	0
Total Active Records	1,043,667	1,036,784	6,882	1

Call Centers: The NICS currently has two call centers in operation to support Call Center services. They are located in Uniontown, Pennsylvania and Moundsville, West Virginia, but they appear as one virtual Call Center to the NICS users. This arrangement provides redundancy and geographic diversity to minimize service disruptions in the event of natural disasters or other unforeseen circumstances. As with all other aspects of the Program, the Call Centers are monitored to ensure high quality service. Each Call Center has its own Quality Assurance Group that identifies problems, evaluates trends in data and makes recommendations to facilitate procedural and call handling improvements. The group monitors randomly selected calls, observes processes and procedures, and collects performance metrics. Continual improvement is achieved by implementing changes based on reported statistics and additional caller/client feedback. Each CCP is evaluated for resolution, efficiency, and credibility. These category ratings report how well the CCP can analyze and react to the customer's needs in an appropriate amount of time while still representing the NICS with confidence and professionalism. Additionally, the FBI NICS Operations Center regularly monitors incoming calls to ensure all quality standards are being met by the Call Centers.

PART 7: THE NICS PARTNERSHIP INITIATIVE

State Visits

The NICS Program Office seeks to encourage a spirit of partnership and cooperation with the various agencies and organizations that participate in completing a NICS check. The NICS management has found that one of the biggest obstacles facing the NICS is the lack of knowledge and recognition regarding the program and its purpose. That lack of knowledge created substantial impediments to obtaining the cooperation of local law enforcement agencies in providing missing disposition information. The NICS, in an effort to improve the understanding of and responsiveness to the Program, has offered to visit as many state court clerk conferences as possible. These visits allow the NICS program officers to hear directly from the field and gives them an opportunity to educate the clerks about the purposes of the NICS and the critical role played by state court clerks in providing disposition information. Representatives of the NICS Program Office have visited numerous POC and non-POC states throughout the country. During 2000, the NICS representatives visited a total of 13 states, many on numerous occasions to ensure coverage of conferences across the state.

The map below illustrates those states visited by representatives of the NICS Program Office since the inception of the NICS in November 1998.¹⁵

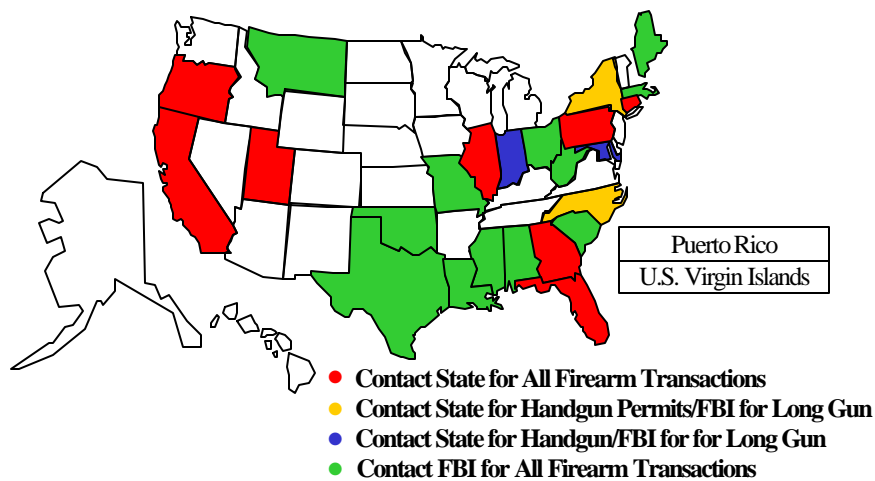


Figure 5

States Visited and Conferences Attended by the NICS Representatives

¹⁵ To arrange for the NICS representatives to attend a special function within your state, please call (304) 625-7332.

The NICS POC Conference

The NICS second annual state POC Conference was held in Pittsburgh, Pennsylvania, on May 31-June 1, 2000. Invitations were sent to representatives from each POC state, as well as representatives from ATF and the DOJ. The Program included presentations on a wide array of subjects: System Availability and Upgrades, the NICS Index, NICS E-Check, Felony Flags, Protection Orders/Brady Indicators, Appeals, and Customer Service. In addition, two guest speakers provided insight into the functionality of successful programs implemented within their state. Sheriff Kathy Witt, Fayette County Sheriff's Office, presented "Kentucky's Commitment to Domestic Violence," a presentation depicting historical landmarks in the fight against domestic violence and Kentucky's current success with the management and utilization of Protection Orders filed within their state. The second guest speaker, Steve Buford, from the California Department of Justice, presented an overview of the California Division of Firearms Background Check Process. As a POC state, California serves as a positive example of an effective and efficient state system.

The NICS Users Conference

The NICS Program Office also hosted a Users Conference for all FFLs and related industry leaders on July 20, 2000, at the West Virginia CJIS Division facility. Approximately 100 individuals attended the conference, including corporate executives from various retailers who sell firearms, FFLs from across the country, representatives of national firearm organizations, state bureau personnel, ATF, and DOJ. The agenda included a tour of the NICS operational center, discussions on operational logistics with the upcoming electronic access option (NICS E-Check), selected legal and policy issues, and the NICS program overview highlighting new initiatives, operational statistics, and procedural guidelines. The conference provided a forum to discuss NICS-related operational issues. In addition, it provided an opportunity to gain feedback from the NICS users for improved customer service.

Federal Agency Core Team

In an effort to better coordinate efforts with our federal agency counterparts, a Federal Agency Core Team¹⁶ was established. This team provides the opportunity for the identification and resolution of any problems or issues arising as a result of the joint efforts between the NICS and other federal agencies. The core team serves many valuable purposes, including:

- Conducting special studies to analyze policies and/or procedures with federal agencies in an effort to improve efficiency and accuracy.
- Analysis and determination of roles and responsibilities of federal agencies and the NICS program.

¹⁶ The Federal Agency Core Team is comprised of those federal agencies submitting records to the NICS Index along with ATF, DOJ, and the FBI.

- Coordination of educational and informational promotions regarding the NICS points of interest to federal field offices, FFLs, and internal NICS employees.
- Quality assurance of records provided by federal agencies to the NICS Index.
- Establishment of POCs within federal agencies.

ATF/FFL Circuit

Lastly, in the spirit of cooperation, the FBI/NICS Program Office is establishing a conference circuit with ATF where NICS representatives will attend various ATF-hosted FFL seminars to provide pertinent information on the NICS operations, new initiatives, and, most importantly, make NICS representatives available to answer any questions and address any concerns of our primary users/gun dealers.

PART 8: FBI NICS APPEALS

Appeal provisions for firearm transactions provide specific means by which citizens can challenge decisions relating to firearm purchase eligibility. Appeals often arise when a denied person claims that he or she is not the individual named in a disqualifying record found by the agency conducting the background check. To resolve the identity question, the appellant will ordinarily submit fingerprints (if not already on file) which will be checked against federal and/or state arrestee print records. If the appellant's prints do not match any records on file, the denial can be reversed. Another basis for appeal is a claim that a disqualifying record is incomplete or inaccurate.¹⁷ The applicant can have the denial reversed by submitting court records to prove that the charge was subsequently dismissed.

Specific appeal procedures are codified in federal law and in the laws of nearly all states. An individual may request the reason for the denial of a firearm transfer from the agency that conducted the check of the NICS ("the denying agency"), which is either the FBI or the state/local law enforcement agency serving as a POC. At the time of a denial, the FFL provides the name and address of the denying agency and the transaction number associated with the NICS background check. The request for the reason for denial normally is made in writing to the denying agency but POCs may waive this requirement at their discretion. Some state procedures for initial appeals tend to be relatively informal; some allow a denied person to initiate a review with a telephone request. The denying agency will respond to the individual with the reasons for the denial within five business days of receipt of the individual's request. The agency response should indicate whether additional information or documentation is required, such as fingerprints for disputes of identity. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and provide the name and address of the agency originating the document upon which the denial was based.

The CJIS Division serves only as the custodian of arrest information submitted voluntarily by federal, state and local law enforcement agencies. Any request for correction or removal of such information must be received from the agency that originally submitted it. Therefore, under the procedures for appeal, the individual may then apply directly for correction of the record to the originating agency. As an alternative, where a POC was the denying agency, the individual may direct his or her challenge directly to the FBI's NICS Operations Center. The FBI, in a joint effort with the POC or agency that is the source of the data, will verify that the record pertains to the individual who was denied and provide notification of any corrections to all related agencies.

¹⁷ The FBI and most states are prohibited from denying a transaction based solely upon arrest information. Colorado is the only known state having legislation which permits a denial decision based upon a "naked arrest." A "naked arrest" is defined as an arrest having no final disposition associated with the charge on record.

Facts About The FBI NICS Appeals

- 14 percent of the NICS denials in 2000 have been appealed, for a total number of 9,372 appeals.
- 78 percent of these appeals were initiated to request the reason(s) for denial; 22 percent were to obtain reason(s) for the transaction's delay.
- 2 percent of appeals received by the NICS are from appellants in POC states.
- Nearly 82 percent of appeals involve appellants who were denied based upon

Figure 6
Facts Regarding FBI NICS Appeals

One measure of the accuracy of the NICS background inquiries is the number of appeals that have been generated, and more importantly, the number of NICS decisions that have been overturned on appeal. Of the 66,808 denials issued by the FBI between January and December 2000, the FBI received 9,372 appeals. This represents 14 percent of the denials. During calendar year 2000, approximately 22 percent of appeals (2,013) were overturned by the NICS appeal team.

Appeals are considered on research and analysis of crime classifications. (For example, felonies may plead out to misdemeanors or lesser charges not reflected on the record available to the NICS). Additionally, overturns sometime involve not the final adjudication of the case at the court level, but the subsequent proceedings which may occur many years later. Many records lack not only final dispositions, but post-judgment relief data as well. Such relief may include automatic restoration of rights at the state level, state statutes offering forgiveness for convictions, or the issuance of pardons at the state or federal level.

Denials are overturned on appeal for a variety of reasons, but most often occur because of inconsistencies on criminal history records, particularly incomplete criminal arrest cycles.

PART 9: 2000 LEGISLATIVE CHANGES

The NICS has obtained an impressive level of success over its first two years but the program is still considered to be within an "infancy" stage. Changes in state and federal legislation and internal policies are proposed on a regular basis. Recognizing the existence of these conditions and the impact of these developments on the process for approving proposed firearms transactions, the NICS Program Office established the State Statute team. This team provides the NICS management with information regarding the details of, and the consequences of, any pending or approved state and federal legislation. In addition, the team assists the NICS Examiners daily with statutory interpretation and applicability when conducting research during background investigations.

The year 2000 brought two significant changes in state legislation regarding the issues of firearm transfers at gun shows and state participation levels with the NICS. The two states involved in these changes are Oregon and Colorado.

Oregon

In 2000, the state of Oregon opted to fund the establishment of a state POC¹⁸ to handle the processing of all firearm transactions for their state. Prior to this initiative, the state of Oregon processed their own transactions for the sale of handguns, while the FBI handled the processing of background transactions for the sale of long guns. December 8, 2000, marked the first day of operations for Oregon as a full POC for the NICS. Although regulated by federal POC guidelines, some provisions allow for areas of variance when compared to the operation of the national program. Some of those differences are discussed in the following table :

¹⁸ See Oregon Gun Firearms Transaction Law, O.R.S. 166.412, for additional information regarding the establishment of Oregon as a NICS POC.

Table 5
Operational Differences Between State and National Background Check Programs

National NICS Program	Oregon NICS Program
NTN, ¹⁹ provided after the completion of a background check, is valid for 30 days if transaction is approved	STN, provided after the completion of a background check, is valid for 24 hours if transaction is approved
Contact with the FFL regarding the status of a background check is required upon the third business day ²⁰ subsequent to the date the check was initiated by the FFL	The state POC should respond to the firearm transferor within 30 minutes of receiving the request providing an estimate of the time needed to determine a final status
The following databases are referenced in a NICS background check - 1) III 2) NCIC 3) NICS Index	The following databases are referenced by the state of Oregon - 1) Oregon criminal history system 2) Oregon Mental Health database 3) Oregon Stolen Guns system 4) The NICS
The NICS is prohibited from charging a fee for criminal background inquiries	The state POC is permitted to charge a fee, not to exceed authorized amounts as set forth in the statute and the fee is per individual and not per firearm

¹⁹ STN represents "State Transaction Number" which is linked through the national system with an assigned NTN.

²⁰ According to federal regulation, the NICS has three business days after the date the check is requested to issue a denial proceed. This is not a waiting period. However, NICS Examiners will continue to request and research applicable information for an extended period to try and obtain needed information if the transaction is a default proceed with no resolution after three days.

Along with the passage of the Oregon Firearms Transaction Law, Oregon created provisions regulating the sale of firearms at Oregon gun shows.²¹ Adopted in 2000, Section 7 of the Oregon gun show law states that transferors other than gun dealers may not transfer a firearm at a gun show unless the transferor:

- Requests a criminal background check prior to completing the transfer.
- Receives notification that the recipient is qualified to complete the transfer.
- Has the recipient complete the Oregon Firearms Transfer Record Form.
- Completes the transfer through a gun dealer.

Colorado

The state of Colorado passed legislation in 2000 regulating the sale of firearms at gun shows. The Colorado legislation:

- Requires background inquiries on all gun purchases at gun shows with the exception of antique guns, curios, and relics.
- Requires a designated licensed gun dealer to obtain background inquiries, and to keep records of purchases as if he or she would be selling, renting, or exchanging at retail.
- Defines a gun show as any event or function where 25 or more guns are offered or exhibited for sale, transfer, or exchange, or at least three gun owners exhibit, sell, offer for sale, transfer, or exchange guns.
- Creates misdemeanor penalties for violation of the provision punishable by jail, fines, or both.

As referred to above, Colorado law now requires at least one designated licensed gun dealer to obtain background inquiries on behalf of non-licensed sellers at gun shows. The licensed gun dealer is permitted to charge a fee of up to ten dollars for this service. The licensed dealer is also required to keep records of guns sold by non-licensed sellers at gun shows. Because of such record-keeping, virtually every gun purchased at a Colorado gun show and subsequently used in a crime will be traceable. The sponsors of the legislation hope these provisions will reduce the number of guns purchased at gun shows by persons who are prohibited from possessing guns, such as criminals and minors. This statute took effect on March 31, 2001.

²¹ Under Oregon law, a "Gun Show" is defined as an event where more than 25 firearms are on site and available for transfer.

PART 10: SUCCESS STORIES OF THE NICS

As of December 30, 2000, the FBI NICS alone has prevented over 156,000 prohibited individuals from purchasing a firearm, including over 4,400 fugitives from justice and over 5,600 individuals with domestic violence restraining orders. In addition, the NICS examiners have also assisted various law enforcement agencies throughout the country in the apprehension of numerous wanted persons. The following examples illustrate the success of the NICS:

- In February 2000, a NICS transaction was delayed. The subject, dismayed over the delay, left the gun dealer's place of business and proceeded to rob a convenience store with a hatchet. Law enforcement authorities were called to the scene at which time the subject proceeded to charge at officers. The officers returned fire, shot and killed the subject. The individual was a multi-state offender in Oklahoma, Alabama, and Georgia. It was believed that the intent of initiating a firearm purchase was so the weapon could have been used during the robbery. The delay of this transaction may have very well saved lives.
- In February 2000, a background check was initiated for an individual attempting to purchase a firearm in Hattiesburg, Mississippi. The NICS Examiner obtained a lengthy criminal history record on the subject with arrests and convictions for offenses such as Petty Larceny, Stolen Vehicles, Aggravated Assault & Battery, and Abandonment of Children. There was also an active warrant for the arrest of the subject for the possession of cocaine. The Examiner obtained the buyer's address from the FFL and learned that the subject was still in the store. The Examiner quickly notified the originating agency and local police authorities of the subject's location. Police authorities telephoned the NICS Examiner later that evening to thank her for her quick action and to advise her that they did have the subject in custody.
- In April 2000, a NICS Examiner was investigating a domestic violence charge for a delayed transaction when she was advised by the arresting agency that the subject was on probation for 12 months for striking his wife in the back of the head. The County Attorney advised that he was also under indictment for shooting at the local courthouse and on strict home confinement with electronic monitoring. The subject had attempted to purchase a firearm on his way home from a post traumatic stress counseling session. The police department notified the NICS Examiner that the subject was currently being held in jail after being positively identified by the clerk who called in the transaction.
- In April 2000, a check in the state of North Carolina was delayed due to a hit in NCIC for Wanted Persons. The NICS learned that the potential transferee was wanted for the willful killing of a family member with a gun. The individual was considered armed and dangerous and had previously assaulted law enforcement officers. The transaction was denied and the suspected felon was apprehended.

- In April 2000, a background check was initiated for an individual attempting to purchase a firearm in Corpus Christi, Texas. The NICS Examiner discovered an active warrant for the individual originating in Pennsylvania. The Examiner obtained the buyer's address from the FFL. It was also learned that the subject had intentions of leaving the state of Texas the following day. The subject was born in Maryland, resided in Alaska, moved temporarily to Texas to get medical treatment for his wife, and was a wanted person in Pennsylvania. The originating agency wished to pursue extradition and the NICS Examiner informed local police authorities in Corpus Christi to arrange for apprehension. It was learned later that day that the subject was captured and was being held pending extradition to Pennsylvania.
- In May 2000, a NICS transaction revealed a valid match in the III database. Identical charges appearing on two separate state records created a complicated evaluation. Several phone calls were initiated to arresting agencies and court systems in both states for the purpose of obtaining records of information in order to update and complete potentially disqualifying records. A disposition was obtained on a felony charge. The county court assisting the NICS Examiner located documentation that the individual was on probation and accordingly prohibited from possessing firearms. A warrant was issued for the subject's arrest.
- In September 2000, a NICS transaction was delayed due to a hit in III with a possibly disqualifying assault arrest. Subsequently, the NICS Examiner discovered a wanted persons match that had just been placed on the IAFIS database. The warrant was verified as valid and active. After further discussions with the local Sheriff's department, the gruesome details of the warrant was uncovered. The subject was suspected of murdering a 16-month-old baby by beating the child to death and then leaving the child with its six-year-old sibling. By examining the details of the NICS transaction, the NICS Examiner and Sheriff's department were able to conclude that the subject had immediately initiated the firearm purchase after the murder was committed. Luckily, the firearm transaction had been delayed that night due to the assault arrest. The NICS later learned that the subject had fled to Mexico and was apprehended on October 1, 2000, when trying to come back across the border. The subject has been charged with capital murder.
- In September 2000, a NICS transaction was delayed due to a potential match of a temporary protection order. The NICS Examiner contacted the district court to determine if any restrictions existed that would prevent the individual from being eligible to purchase a firearm. The subject had threatened to murder her mother and had recently been released from a mental health facility. In addition, the subject had an active warrant for making terroristic threats. As a result of the rapid work of the NICS Examiner and the cooperative nature of the district court employees, local law enforcement agents were able to apprehend the subject while still at the firearm dealership.

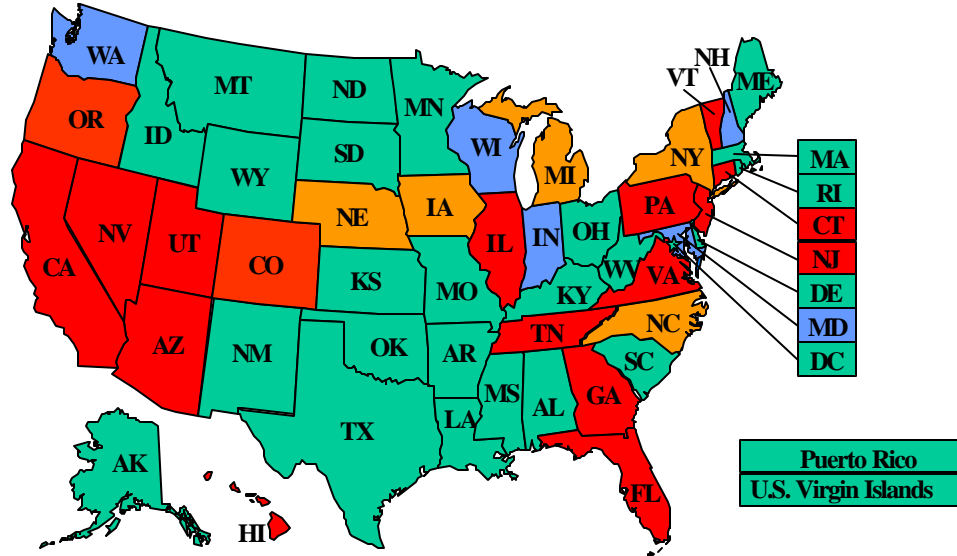
APPENDIX A

THE FBI NICS MISSION STATEMENT

To ensure the timely transfer of firearms to law-abiding citizens and to deny the transfer to persons who are prohibited from possessing or receiving such firearms by aggressively reviewing and analyzing available records in accordance with the provisions of the Brady Handgun Violence Prevention Act of 1993.

APPENDIX B

THE NICS PARTICIPATION MAP



- **16** Contact State/Territory for ALL Firearm Background Checks
- **5** Contact State for Handgun Permits & FBI for Long Gun Background Checks
- **5** Contact State for Handgun & FBI for Long Gun Background Checks
- **27** Contact FBI for ALL Firearm Background Checks

APPENDIX C

WHAT IS A NICS CHECK AND HOW DOES IT WORK?

Legal Requirements for the NICS Background Check

The Brady Act prohibits a FFL from transferring a firearm until the FFL has contacted the NICS and *either* the transfer has been allowed *or* three business days have passed without an indication from the NICS that the prospective purchaser is prohibited from possessing a firearm. Once contacted, the NICS is expected to provide information regarding whether the prospective firearm purchaser is prohibited from possessing a firearm under federal or state law.

Prohibited categories include:

1. Convicted felons and persons under indictment for a felony.
2. Fugitives from justice.
3. Unlawful drug users or drug addicts.
4. Individuals who have been involuntarily committed to a mental institution or determined to be mentally incompetent.
5. Illegal aliens and legal aliens admitted under a non-immigrant visa.
6. Individuals who have been dishonorably discharged from the military.
7. Persons who have renounced their citizenship.
8. Persons subject to certain domestic violence restraining orders.
9. Persons convicted of misdemeanor crimes of domestic violence.

Actions Involved in a NICS Check

1. **Applicant Completes Bureau of Alcohol, Tobacco and Firearms (ATF) Form 4473**

The purchaser must provide photo identification to the FFL. The purchaser and the FFL then complete their respective parts of the ATF Form 4473, also known as the "Firearms Transaction Record." The completed ATF Form 4473 contains information such as name, address, date of birth, and a certification from the purchaser that he or she is not prohibited under state or federal law from purchasing or possessing a firearm.

2A . **FFLs Contact the State Law Enforcement Agency Serving as a POC for the NICS Transactions**

In states that agree to conduct Brady background inquiries, once the ATF's Form 4473 is completed, the FFL contacts the state POC for a NICS check. A state POC is a state agency that agrees to conduct Brady background inquiries on prospective gun purchasers. In states that have agreed to serve as POCs, FFLs contact the state POC for a Brady background check rather than contacting the FBI.

A state POC will access the state's independent criminal history database as well as the NICS system. The NICS provides access to millions of criminal history records from all 50 states and the District of Columbia. A state's database typically contains references not only to the state's records which are part of the NICS databases, but also to the state's automated and manual records—including many final dispositions—which are not part of the NICS. Many states also have access to records about people in the other prohibited categories, such as people who have been involuntarily committed to a mental institution or are under a domestic violence restraining order. Through programs such as NCHIP, the accessibility of such records will ultimately be made available to not only the NICS, but other state law enforcement agencies across the country through the national databases.

2B. **In Other States, FFLs Contact the FBI for the NICS Transactions**

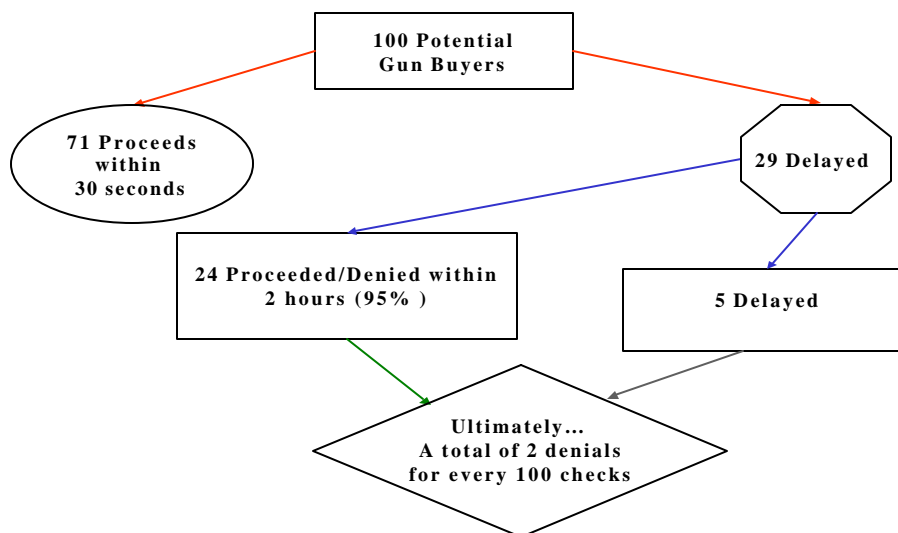
In states that have not agreed to serve as state POCs, once the ATF Form 4473 is completed, the FFL contacts the NICS at the FBI via a toll free telephone number to request a background check. The NICS is available for background inquiries 17 hours a day, seven days a week, including holidays (except Thanksgiving and Christmas). The call is received at one of two call centers located in Moundsville, West Virginia, and Uniontown, Pennsylvania.

A call center customer care provider (CCP) enters the buyer's descriptive information into the NICS computer to initiate a search of the NICS databases. Once this information is entered and sent to the NICS, one of two responses will be returned from the NICS—proceed or delay—along with a NICS Transaction Number (NTN) for that particular transaction.

The call center CCP does not have access to and cannot receive any other information in the NICS relative to criminal history information, wanted persons information, or any other NICS Index protected information. Most of the time (71 percent), the NICS responds immediately with a proceed response because there is no disqualifying or potentially disqualifying information in the system. In these instances, the FFL can complete the sale, and the purchaser can leave the gun store or gun show with the firearm. Sometimes, the NICS identifies disqualifying or potentially disqualifying information in the system and generates a delay response. In these cases, the NICS will forward the information to the FBI Operations Center where an FBI employee known as a NICS examiner will review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it contains disqualifying arrest or disposition information.

3. **The NICS Responses to Requests for Background Inquiries Must be Timely and Accurate**

Under the Brady Act, as soon as the NICS is able to determine accurately that there is no information demonstrating that the buyer is a prohibited person, the gun transfer is allowed to proceed. This means that there is *no* federal waiting period. Seventy-one percent of all prospective gun purchasers are authorized by the NICS to make their purchase *immediately* (within approximately 30 seconds on average after information is entered into the NICS). Experience shows that the NICS provides a definitive response (proceed or deny) to 95 percent of all requests within two hours of receipt of information required to search the NICS. Only five percent of prospective purchasers have to wait more than two hours for a NICS response, and these persons are given their response as soon as the NICS obtains the necessary information. A purchaser whose NICS check takes more than 24 hours to complete is almost 20 times more likely to be a prohibited person than the average gun buyer. This process is further illustrated as follows:



APPENDIX D

HISTORICAL BACKGROUND OF THE NICS

Situation Before the Brady Handgun Violence Prevention Act

Since the passage of the Gun Control Act in 1968, certain individuals, such as convicted felons, have been prohibited from possessing firearms under federal law. Until the passage of the Brady Act in 1993, firearms were sold, even by FFLs, on an honor system, and there was no mechanism for ensuring the truthfulness of prospective purchasers representations. Virtually the only recourse that federal law enforcement had against felons and other prohibited people who sought to purchase firearms was to prosecute them *after* they gained illegal possession of the firearm.

Brady Act Requires Background Inquiries

The Brady Act put an end to the honor system by requiring background inquiries on firearms purchasers buying firearms from FFLs. The Brady Act called for implementation in two phases: from February 28, 1994, until November 30, 1998, the rules of “Interim Brady” applied; since November 30, 1998, the provisions of “Permanent Brady” have been in place. During the Interim Brady phase, the Brady Act applied only to handgun sales, and background transactions were conducted by local and state law enforcement. During this time, there was no centralized mechanism for firearms background inquiries, and the Brady Act relied on the willingness of local sheriffs and other state law enforcement officials to do the background inquiries. Under Interim Brady, law enforcement officials had up to a maximum of five business days to complete background transactions. The Interim Brady system was extremely effective, preventing over 310,000 felons, fugitives, and other prohibited persons from getting handguns.

Brady Act Requires a National System for Conducting Instant Background Transactions

The Brady Act also required the Attorney General to develop within five years of November 30, 1993, a national system for conducting criminal background inquiries instantly. The Brady Act requires that the national system, the NICS, be utilized by any FFL to determine whether a prospective firearms transfer would violate federal or state laws.

Local and State Officials Assist the FBI in Designing the NICS

To ensure that the national system required by the Brady Act would meet the needs of local and state law enforcement, the FBI created the Brady Act Task Group. This group was composed of representatives from the DOJ, ATF, and state and local officials who assisted the FBI in identifying the requirements for the NICS and in designing the system. Between 1994 and 1998, the Brady Act Task Group held formal meetings to provide detailed comments and recommendations to the FBI's NICS system developers. This task group was instrumental in preparing the NICS concept of operations.

The concept called for firearms background transactions to include a check of databases at the state and national levels. When an FFL conducts a NICS check, a name search is conducted for any matching records in three different databases, managed by the FBI. These include:

- The National Crime Information Center (NCIC), which contains records on wanted persons and subjects of protective/restraining orders;
- The Interstate Identification Index (III), which contains criminal history records; and
- The NICS Index, which contains records of other prohibited persons as outlined in the Gun Control Act, such as individuals who have received dishonorable discharges from the armed services, individuals who have renounced their citizenship, mental defectives, and illegal/unlawful aliens.

Establishment of the NICS Program Office

On August 1, 1998, the FBI's Criminal Justice Information Services Division established the NICS Program Office. This entity had the responsibility to coordinate closely the final stages of development of the NICS and the transition to an operational program. These tasks included coordinating a multitude of functions and projects such as: staffing; development of a training manual; training of employees; developing work procedure manuals; documenting state statutes regarding prohibitive NICS categories; enrollment of FFLs; acquiring space, desks, phones, and computers; testing computer applications; setting up a management structure; creating reports on operations; preparing budget estimates; preparing workload projections; and creating and modifying work schedules.

APPENDIX E

ACRONYM LIST

AFIS	Automated Fingerprint Identification System
ATF	Bureau of Alcohol, Tobacco, and Firearms
BICS	Background Investigation Contract Services
BJA	Bureau of Justice Assistance
BJS	Bureau of Justice Statistics
CAO	Contracts Administration Office
CCP	Customer Care Provider
COTS	Commercial Off The Shelf
CJIS	Criminal Justice Information Services
DDF	Disposition Document File
DOJ	Department of Justice
DUI	Driving Under the Influence
FFL	Federal Firearms Licensee
IAFIS	Integrated Automated Fingerprint Identification System
IA	Internal Assessment
III	Interstate Identification Index
ITN	Identification Tasking and Networking
MRD	Machine Readable Data
NCHIP	National Criminal History Improvement Program
NCIC	National Crime Information Center
NICS	National Instant Criminal Background Check System
NIN	National Instant Notification
NTN	NICS Transaction Number
PC	Process Control
POC	Point Of Contact
SAIC	Science Applications International Corporation
SoS	System of Systems
STN	State Transaction Number